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Supreme Court of the United [illegible]

OCTOBER TERM, 1931.

No. 158.

AMOS SHRIVER, *Appellant*,

vs.

WOODBINE SAVINGS BANK OF WOODBINE, IOWA,
Appellee.

APPEAL FROM THE SUPREME COURT OF THE STATE OF IOWA.

BRIEF FOR THE APPELLANT, AMOS [illegible]

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AMOS SHRIVER, *Appellant*,

vs.

WOODBINE SAVINGS BANK OF WOODBINE, IOWA, *Appellee.*

BRIEF FOR THE APPELLANT, AMOS SHRIVER.

OPINIONS BELOW.

Two opinions were rendered by the Supreme Court of Iowa. The first opinion is reported in 226 N. W. 374 and the second and final opinion is reported in 236 N. W. 10. Neither opinion is officially reported in Iowa Reports. The first opinion is printed in the record (R. 47) and the second (R. 55).

STATEMENT OF THE CASE.

The facts of the case were in the main embodied in a stipulation used as evidence in the trial court. (R. 7, 8.)

There were four cases by the same plaintiff (appellee herein) against four separate defendants. The stipulation was drawn and used in all four of the cases as evidence.

The action is a suit at law by Woodbine Savings Bank against Amos Shriver, a stockholder, for personal judgment upon an assessment to restore impaired capital of the bank.

Appellee was incorporated under the laws of Iowa on May 6, 1891, with Articles of Incorporation duly adopted (R. 8, 15). Appellee reincorporated and renewed its corporate existence May 11, 1911, and adopted what it denominated "Amended and Substituted Articles of Incorporation." (R. 8, 17.)

Amos Shriver, appellant, acquired ten shares of the capital stock of appellee bank on May 18, 1891, ten more shares of such stock on April 16, 1906 and six and one-sixth shares on February 14, 1917. The Iowa Banking Department was criticizing appellee for allowing some of its shares to be owned in fractional parts. At the request of appellee bank, appellant surrendered to the bank his certificate evidencing his six and one-sixth shares, received payment for the one-sixth share, and was issued a new certificate evidencing the same six shares. (R. 13.) Appellant's stock was fully paid up stock. (R. 34.)

No provision relative to an assessment to restore impaired capital is found in the original Articles of Incorporation (R. 15) or in the so-called Amended and Substituted Articles of Incorporation (R. 17), or in the stock certificates evidencing ownership of the stock, or in the by-laws of appellee bank (R. 34). No basis for liability is claimed other than the statutes of Iowa.

The statutes involved are set out in an Appendix hereto, pages 28 to 34.

The legislation originated in an Act of Iowa General Assembly effective May 5, 1894. (Acts 25 G. A. of Iowa, Chap. 29) (Appendix page 29). This act was codified and carried forward into the Code of Iowa, 1897, as Sections 1878, 1879, 1880 thereof. (Appendix page 29.) The Act was further codified and carried forward into the Code of Iowa, 1924,

as Sections 9246, 9247, 9248, 9249 and 9250 thereof. (Appendix page 30.) In 1925 the Forty-first General Assembly of Iowa enacted an amendment to Section 9248 of the Code of Iowa, 1924, (41 G. A. Chap. 181) (Appendix page 32), which was carried forward and codified as Section 9248-a1, Code of Iowa, 1927 (Appendix page 34).

On February 15, 1927, the Superintendent of Banking of Iowa found the capital stock of appellee bank impaired one hundred per cent. Pursuant to Sections 9246, 9247 and 9248 Code of Iowa, 1927, an assessment was ordered and made to make good the impairment. (R. 9.) The twenty-six shares of stock owned by appellant were advertised and sold for One Dollar per share or a total of $26.00 (R. 11).

This suit was then brought under Chap. 181, Acts 41 G. A. (Sec. 9248-a1, Code of Iowa, 1927) to recover from appellant the amount of the assessment over what was realized from the sale of the stock or a total sum of $2,574.00 (R. 1).

Appellant by answer in the trial court attacked Chap. 181, Acts 41 G. A. (Section 9248-a1, Code of Iowa, 1927) as applied to him in that it impaired the obligation of his contract as a stockholder in the bank, in violation of Section Ten, Article One, Constitution of the United States and deprived him of his property without due process of law, in violation of the Fourteenth Amendment to the Constitution of the United States (R. 4).

The trial court found that Section 9248-a1, Code of Iowa, 1927, was not vulnerable to the attack made upon it by appellant and entered judgment against appellant for the amount claimed. (R. 37, 42.)

The assessment was made by the Board of Directors of Appellee bank. (R., 3, 23, 9.)

Appellant perfected an appeal to the Supreme Court of Iowa and assigned as errors the invalidity of Section 9248-a1 Code of Iowa, 1927, under Section Ten, Article One, Consti-

tution of the United States and the Fourteenth Amendment to the Constitution of the United States. (R. 43, 44.)

On June 24, 1929, the Iowa Supreme Court filed its opinion reversing the judgment below (R. 47) and holding Section 9248-a1 Code of Iowa impaired the obligation of appellant's contract as a stockholder in the bank as to any impairment of capital in existence when the statute was enacted. In this opinion, the Iowa Supreme Court held the statute to be valid as to any impairment of capital stock coming into being after the statute was enacted. (Division IV of opinion R. 54.)

Because of Division IV of this opinion, appellant applied for rehearing to correct same, and appellee also filed petition for rehearing. The petitions for rehearing were granted (R. 55). On April 10, 1931, the Iowa Supreme Court filed its opinion affirming the judgment below. (R. 55.) There is a dissenting opinion by three judges of the Iowa Supreme Court upholding appellant's contentions. (R. 64.)

SPECIFICATION OF ERRORS.

1. The Supreme Court of the State of Iowa erred in holding Section 9248-a1, Code of Iowa, 1927 does not impair the obligation of appellant's contract as a stockholder in the Woodbine Savings Bank of Woodbine, Iowa, in violation of Section Ten of Article One of the Constitution of the United States.

2. The Supreme Court of Iowa erred in holding that Section 9248-a1 Code of Iowa, 1927 was a permissible change of remedy for a liability in existence before the enactment of said statute.

3. The Supreme Court of the State of Iowa erred in not holding Section 9248-a1 of the Code of Iowa, 1927 unconstitutional as depriving appellant of his property without due

process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

4. That the Supreme Court of the State of Iowa erred in holding that there was a personal liability resting upon appellant to pay the assessment to rehabilitate the impaired capital of appellee bank prior to the enactment of Section 9248-a1, Code of Iowa, 1927.

5. The Supreme Court of the State of Iowa erred in holding that Section 9248-a1 of the Code of Iowa, 1927 did not impose a new and additional liability upon appellee not imposed upon him by his contract as a stockholder in appellee bank or by the law of the State of Iowa at the time appellant became such stockholder.

SUMMARY OF ARGUMENT.

1. The law of Iowa prior to the enactment by the 41st General Assembly (41 G. A. Iowa Ch. 181) (Sec. 9248-a1 Code of Iowa 1927) did not impose any personal liability upon stockholders in savings banks to pay an assessment to restore impaired capital. Therefore no personal liability was imposed upon appellant under his stockholders contract to pay the assessment.

2. Sec. 9248-a1 Code of Iowa 1927 (41 G. A. Iowa Ch. 181) imposed a new and additional liability upon appellant as a stockholder in Woodbine Savings Bank of Woodbine, Iowa and as applied by the Iowa Supreme Court impairs the obligation of appellant's contract as a stockholder in said bank.

3. Sec. 9248-a1 Code of Iowa 1927 (41 G. A. Iowa Ch. 181) as applied to appellant is an unreasonable and arbitrary imposition of personal liability not assumed or consented to and takes appellant's property without his consent and gives it to another. Hence, said statute violates due process of law and is unconstitutional.

ARGUMENT.

I.

NO PERSONAL LIABILITY TO PAY THE ASSESSMENT EXISTED PRIOR TO 1925.

The challenged statute (41 G. A. Ch. 181) Sec. 9248-a1, Code of Iowa, 1927 became effective March 13, 1925. (Appendix page 34.)

Prior to the enactment of this statute the legislation of Iowa did not provide for a liability such as is sought to be enforced in this case. The legislation relative to assessment upon stockholders to restore impaired capital first came into existence in the year 1894 by virtue of an Act of the 25th General Assembly of Iowa. (Acts 25 G. A. Ch. 29.) (Appendix page 28). The enactment of the 25th G. A. remained the same, except for slight changes due to codification, until 1925, when the 41st G. A. enacted what is now Section 9248-a1 Code of Iowa, 1927.

The enactment of the 25th General Assembly of Iowa was as follows:

> "That should the capital stock of any state or savings bank organized under the laws of this state be now, or hereafter become impaired by losses or otherwise, the board of directors of such state or savings bank may by consent of the Auditor of state, within thirty (30) days after the passage of this act, or after such impairment shall come to their knowledge, cause the deficiency to be made good by assessment upon the shareholders pro rata for the amount of stock held by them. Notice of such assessment to be given in writing signed by the president or vice president and attested by the cashier or secretary of the association with the corporate seal thereof. The deposit of said notice in the post office directed to the shareholders at their last known address shall be sufficient for the purpose of this act."
>
> "Sec. 2. Should any shareholders in any state or savings bank organized under the laws of this state neglect

or refuse to pay their pro rata of an assessment made under Section 1 of this act within ninety days after notice thereof, it shall be the duty of the board of directors to cause a sufficient amount of the capital stock held by such shareholder or shareholders to be sold at public auction (after thirty days' notice shall have been given by posting such notice of sale in the office of the bank and by publishing such notice in a newspaper of the city or town in which the bank is located, or in a newspaper published nearest thereto) to make good the deficiency, and the balance, if any, shall be returned to such delinquent shareholder or shareholders."

"Sec. 3. Should the board of directors of any state or savings bank organized under the laws of this state, the capital stock of which now is, or hereafter may become impaired, neglect or refuse to proceed as provided in Section 1 of this act, they shall by reason of such neglect or refusal, for a period of ten days after being requested in writing by the owner of two-thirds of the stock of such bank by and with the consent of the Auditor of state, become individually liable for the amount of such deficiency and said liability may be enforced at law by any creditor of or stockholder in the association; or in case of its subsequent insolvency by the receiver thereof."

The above act was carried forward and codified as Sections 1878, 1879, and 1880, Code of Iowa, 1897. (Appendix page 29.)

It was further carried forward and codified as Sections 9246, 9247, 9248, 9249, 9250, Code of Iowa, 1924. (Appendix page 30.)

It is plain that the 25th General Assembly of Iowa in enacting the above quoted statute created a new and different right. It is equally clear that at the same time and as a part of the same act it specified how the liability should be enforced.

Where a statute creates a right, and provides a special

remedy, that remedy is exclusive. This is the general rule of construction.

City of Carondelet v. Picot, 38 Mo. 125.
Pollard v. Bailey, 20 Wall. (87 U. S.) 520, 527.
The Andover & Medford Turnpike Corp. v. Gould, 6 Mass. 40.
Dollar Savings Bank v. United States, 19 Wall. (86 U. S.) 227, 238.
Jefferson County Farm Bureau v. Sherman, 208 Iowa 614, 618.
Cole v. City of Muscatine, 14 Iowa 296.
Lease v. Vance, 28 Iowa 509.
Conrad v. Starr, 50 Iowa 470.
Hullitt v. Bell, 85 Fed. Rep. 98-102.
The Chester Glass Co. v. Dewey, 16 Mass. 94-101.
Mechanics Foundry & Machine Co. v. Hall, 121 Mass. 272.
City of Camden v. Allen, 26 N. J. Law 398.
Globe Newspaper Co. v. Walker, 210 U. S. 356.

The rule is founded upon the thought that where the legislature designates the remedy it impliedly prohibits any other and thus limits the liability.

United States v. Stevenson, 215 U. S. 190.
Dollar Savings Bank v. United States, 86 U. S. (19 Wall.) 227, 238.

The case of *Hullitt v. Bell*, 85 Fed. (C. C.) 98, was an action under the National banking Act to recover against a stockholder upon an assessment to restore impaired capital, and the court held that there was no personal liability. The statute involved provided for an assessment against the shareholders of national banks to restore impaired capital and for sale of the stock in case the shareholder did not pay the assessment.

The Act of the 25th General Assembly of Iowa in its original form and as codified did not in terms impose a personal liability on shareholders to pay the assessment. It was optional with the shareholder. He had the right to pay the as-

sessment and protect his stock, otherwise he lost sufficient of his stock to pay the assessment. The Iowa legislature in this act did not use any language appropriate to create a personal liability.

Surely where the legislature is creating a liability, its language is not to be extended by construction.

Brunswick Terminal Co. v. National Bank of Baltimore, 192 U. S. 386, 390.
Alexander v. Crosby, 143 Iowa, 50, 54.
Highway Trailer Co. v. Janesville Electric Co., 187 Wis. 161, 204 N. W. 773, 780.

If it had been the intent of the legislature to create a personal liability against the shareholder for the assessment, it would have used language such as "it shall be the duty of the stockholder to pay", "The shareholder shall pay", "the shareholder shall be liable" or similar language.

Glass Co. v. Dewey, 16 Mass. 94, 101.
Machine Co. v. Hall, 121 Mass. 272, 275.
Land Co. v. Jernegan, 126 Mass. 155.
City of Carondelet v. Picot, 28 Mo. 125.

It will be noticed that in Section 3 of this Act (25 G. A. Ch. 29) the legislature used the term "individually liable" when providing the liability of bank directors who failed to proceed and make the assessment.

It is not reasonable to say that a shareholder was personally liable for the assessment to restore impaired capital after his stock had been sold. The sale of the stock terminated his relationship with the corporation. Had the Iowa legislature intended to make him liable after his stock was sold, it would have expressly so declared.

The statute passed in 1925 (41 G. A. Ch. 181, Sec. 9248-a1, Code of 1927) does expressly provide for a personal liability after sale of the stock and also provides a remedy by suit.

The Supreme Court of Iowa held in its opinion in this case that Section 9248-a1, Code of Iowa, 1927 (41 G. A. Ch.

181) was merely a change of remedy for an existing liability. The Iowa Supreme Court treated the sale of the stock as a remedy for a personal liability and held that the new statute Section 9248-a1, Code of Iowa 1927 (41 G. A. Ch. 181) did not add a new liability.

The Iowa Court has held in other cases that there was no personal liability upon stockholders under the statutes prior to the enactment of Section 9248-a1 Code of 1927 (41 G. A., Ch. 181).

Leach v. Arthur Savings Bank, 203 Iowa 1052, 213 N. W. 772.

Andrew v. Peoples State Bank of Humboldt, 234 N. W. 542, 546 (Decided January 13, 1931. Not yet published in Iowa Reports.)

In *Leach v. Arthur Savings Bank*, 203 Iowa 1052, the Iowa Supreme Court held that the stockholder had the option of paying the assessment or of permitting his stock to be subjected to sale for failure to pay, and that the payment of the assessment was voluntary in the sense that the stockholder exercised his option to pay rather than permit his stock to be sold. In the course of the opinion and at page 1057 the Iowa Court said:

> "It will be noticed that, under these sections for making an assessment to rehabilitate impaired capital, there is no personal liability created as against the stockholder (under Chapter 181, Acts of the Forty-first General Assembly, a personal liability is created for a deficiency); while, under Section 1882, the liability provided is a personal liability. The most that could happen to the holder of stock under which an assessment had been made under Section 1878 and the following sections is that, if he wished to keep his capital stock, he must pay the assessment; otherwise, if he failed, neglected, or refused to pay his assessment, he lost a sufficient amount of his capital stock to pay such assessment, but he was not made personally liable for such assessment. This is the distinction between the effect of Section 1878, and its

companion sections, providing for assessments against the stock, and the superadded liability provided for by Section 1882. Or, to put it another way, the assessment statute is for the purpose of raising funds to continue the banking operation, while Section 1882 carries a liability for liquidation purposes only, which can never be called into operation until the bank has passed into the hands of a receiver."

As late as January 1931 the Iowa Supreme Court in *Andrew v. Peoples State Bank of Humboldt*, 234 N. W. 542, 546, referring to the case of *Leach v. Arthur Savings Bank*, 203 Iowa 1052, said:

"It is true that in the *Arthur Savings Bank* case we held that the stockholder had the option of paying the assessment or of subjecting his stock to sale and forfeiture for failure to pay and that the payment of the assessment was voluntary in the sense that the stockholder exercised his option in that direction. Under the statute then in force, there was no personal liability of the stockholder such as is now provided by section 9248-a1."

In the present case the Iowa Court says there was always a personal liability resting on the stockholder to pay an assessment to restore impaired capital, but there was no way of enforcing it. The Iowa Court overlooks the rule that where a new liability is imposed by statute and a remedy expressly provided, there is no liability in excess of the remedy. The right created is limited by the remedy given. The remedy operates as a limitation and goes to cut down the right.

Statutes of limitations are usually considered as laws of procedure affecting the remedy only. This is not true where a new right is created and, in the same statute, the time for enforcing this right is limited.

In *Davis v. Mills*, 194 U. S. 451, 454 this court said:

> "It is true that this general proposition is qualified by the fact that ordinary limitations of actions are treated as laws of procedure and as belonging to the *lex fori*, as affecting the remedy only, and not the right. But in cases where it has been possible to escape from that qualification by a reasonable distinction courts have been willing to treat limitations of time as standing like other limitations, and cutting down the defendant's liability wherever he is sued. The common case is where a statute creates a new liability, and in the same section, or in the same act limits the time within which it can be enforced, whether using words of condition or not. The *Harrisburg*, 119 U. S. 199, 30 L. ed. 358, 7 Sup. Ct. Rep. 140. But the fact that the limitation is contained in the same statute is material only as bearing upon construction. It is merely a ground for saying that the limitation goes to the right created and accompanies the obligation everywhere."

It has also been held that where a statute creates a new right of action and prescribes the method of assessing damages, the method of assessing damages operates as a limitation upon the right and does not pertain to the remedy alone.

Slater v. Mexican National Railroad Company, 194 U. S. 120.

So in this case, the right given by the statute was limited to a sale of the stock. It was optional with the shareholder whether he paid the assessment or whether he permitted his stock to be sold and his relation to the corporation terminated. If the shareholder did not care to invest more capital in the enterprise, he was under no duty or obligation to do so. It is submitted that this is the proper construction of the statute and the measure of appellant's liability under his contract as a stockholder. Such is the construction adopted by the Iowa Supreme Court in the cases of *Leach v. Arthur Savings Bank*, 203 Iowa, 1052 and *Andrew v. Peoples State Bank of Humboldt*, 234 N. W. 542.

The opinion of the Iowa Supreme Court in this case is fanciful and sustains the statute challenged as unconstitutional by an erroneous finding as to the obligation of appellant's contract as a stockholder. Under the record in this case the question of what was the obligation of appellant's contract prior to the enactment of section 9248-a1, Code of Iowa 1927 is a federal question and the Iowa Supreme Court can not avoid Section 10 of Article 1, Constitution of the United States by an erroneous construction of the statute that formed a part of the appellant's contract.

Terre Haute & Indianapolis Railroad Co. v. State of Indiana, 194 U. S. 579.

II.

SECTION 9248-a1, CODE OF IOWA, 1927, (41 G. A. CH. 181) AS APPLIED BY THE IOWA SUPREME COURT IMPAIRS THE OBLIGATION OF APPELLANT'S CONTRACT AS A STOCKHOLDER IN THE BANK.

Appellant owned twenty-six shares of capital stock in appellee bank. The stock was all fully paid up stock. It was all acquired by appellant prior to the enactment of Section 9248-a1, Code of Iowa, 1927. In the preceding division of this argument, we have attempted to show that the law prior to 1925 when the legislature enacted Section 9248-a1, Code of 1927 (41 G. A., Ch. 181) did not impose any personal liability upon appellant to pay an assessment to restore impaired capital.

Appellant acquired all of his stock in appellee bank prior to 1925. Ten shares were acquired on May 18, 1891, ten shares on April 16, 1906 and six and one-sixth shares on February 14, 1917. Because appellee bank was being criticized by the Iowa Banking Department for having some of its shares owned in fractional parts, appellant surrendered his certificate evidencing the six and one-sixth shares and

in lieu thereof received on June 8, 1926, a certificate representing his six shares evidenced in his former certificate for six and one-sixth shares (R. 13, 34).

The form of the certificate is shown (R. 35), and it was stipulated that the certificates evidencing the other shares were in the same form except as to dates and number of shares (R. 34).

The certificate of June 8, 1926, represented six shares acquired by appellant in 1917. (R. 34.) The certificate is merely evidence of the stock and not the stock itself.

In re Culver, 145 Iowa 1.

The relationship between appellant as a stockholder and appellee, the corporation was contractual.

Flash v. Conn, 109 U. S. 371.
First National Bank v. Hawkins, 174 U. S. 365, 372.
Whitman v. National Bank, 176 U. S. 559, 564.
Richmond v. Irons, 121 U. S. 27, 55, 56.
Harrison v. Remington Paper Co., 72 C. C. A. 405, 140 Fed. Rep. 385.
Bernheimer v. Converse, 206 U. S. 516, 530.
Garey v. St. Joe Mining Co., 32 Utah 497, 91 Pac. 369.
Yoncalla State Bank v. Gemmill, 134 Minnesota 334.
Deweese v. Smith, 45 C. C. A. 408, 106 Fed. Rep. 438.

The law existing at the time appellant became the owner of his stock formed a part of his contract and fixed the obligations of the contract.

McCracken v. Hayward, 43 U. S. (2 How.) 608, 612.
Seibert v. Lewis, 122 U. S. 284, 294, 295,
United States ex rel. Von Hoffman v. Quincy, 71 U. S. (4 Wall.) 535, 550.
Harrison v. Remington Paper Co., 72 C. C. A. 405, 140 Fed. Rep. 385.

It is the law that fixes the obligation of every contract. This court said in *Louisiana v. New Orleans*, 102 U. S. 203, 206:

"The obligation of a contract in the constitutional sense is the means provided by law by which it can be enforced,—by which the parties can be obliged to perform it."

The obligation of a contract "is the law which binds the parties to perform their agreement."

Von Hoffman v. City of Quincy, 71 U. S. (4 Wall.) 535, 552.
Sturges v. Crownshield, 17 U. S. (4 Wheat.) 122, 197.

Therefore, at the time appellant entered into the contract as a stockholder in appellee bank, no obligation was cast upon him to pay an assessment to restore impaired capital. No such obligation was imposed upon appellant until 1925 when the legislature of Iowa enacted Section 9248-a1 Code of 1927. By this statute, a personal liability is created for a deficiency in the assessment after sale of the stock. Surely under the law existing when appellant made his contract, there was no obligation upon him to pay a deficiency after sale of his stock. The legislature of Iowa certainly would have used express language had it intended any such liability.

In creating the personal liability for the deficiency in the assessment after sale of the stock, a new burden is cast upon appellant as a stockholder. Thus, the contract of appellant as a stockholder in appellee bank is impaired in violation of Section Ten, Article One, Constitution of the United States.

Northern Pacific Railway Co. v. The State of Minnesota, 208 U. S. 583, 591.
Bernheimer v. Converse, 206 U. S. 516, 530.
Terre Haute & Indianapolis Railroad Co. v. State of Indiana, 194 U. S. 579.
Detroit Ry. v. Michigan, 242 U. S. 238, 246.
Columbia Railway Gas and Electric Company v. State of South Carolina, 261 U. S. 236, 251.
Garey v. St. Joe Mining Co., 32 Utah, 497.
Green v. Biddle, 8 Wheat. 84.
Enterprise Ditch Co. v. Moffit, 58 Neb. 642.

The construction of the state statutes by the Iowa Supreme Court is not conclusive on this court when the question of impairment of the obligation of contract is involved. It is for this court to say whether there is a contract, the extent of its obligation, and whether the obligation is impaired.

Columbia Railway, Gas and Electric Co. v. State of South Carolina, 261 U. S. 236, 244, 245.
Detroit United Ry. v. Michigan, 242 U. S. 238, 246, 248.
Stearns v. Minnesota, 179 U. S. 223, 232.
The Bridge Proprietors v. Hoboken, 68 U. S. (1 Wall.) 116, 141, 145.
Terre Haute & Indianapolis Railroad Co. v. State of Indiana, 194 U. S. 579.

The reserved power of the state over corporations is not applicable to prevent the statute (Sec. 9248-a1, Code of Iowa, 1927) from being an impairment of contract. The reserve power statutes originated after *Dartmouth College* case, 4 Wheat. 518. The great weight of authority is that the reserve power applies only as between the state and corporation. The state reserves the right to control or revoke all rights it granted the corporation. It does not apply to change the rights and obligations as between the stockholders and the corporation.

Miller v. The State, 15 Wall. 478 (15 Wall. 478).
St. John v. Building & Loan Association, 136 Iowa 448, 454.
Garey v. St. Joe Mining Co., 32 Utah 497, 91 Pac. 369, 12 L. R. A. (N. S.) 554.
Union Pacific Railroad Co v. United States, 99 U. S. 700, 720, 721.
Central Pacific R. R. Co. vs. Albert Gallatin, 99 U. S. 700, 727, 741, 748, 758.
1 Roses Notes on U. S. Reports Rev. Ed. p. 989.
County of San Mateo v. Southern Pacific, (C. C.) 13 Fed. Rep. 722, 755.
Iowa Telephone Co. v. Keokuk, 226 Fed. Rep. 82, 92.
Beach on Corp. (1891) (1st Ed.) Vol. 1, pages 73, 74.

Superior Water, Light & Power Co. v. City of Superior, 263 U. S. 125.
Cook on Corporations, 5th Ed. Sec. 501.
Clark & Marshall on Private Corporations, Vol. 3, Sec. 631 f.
Thompson's Commentaries on the Law of Corporations, Vol. 4, Sec. 5417.
Kenosha Railroad Co. v. Marsh, 17 Wis. 13, 16.
Morawetz on Corporations, (2nd Ed.) Vol. 2, page 1097.
Com. v. Essex Co., 13 Gray, 239, 253.
Snook v. Georgia Imp. Co., 83 Ga. 61.

There is a clear distinction between an assessment to restore impaired capital and an assessment to pay debts of the corporation upon its insolvency and liquidation. The assessment to restore impaired capital is for the benefit of the corporation to be used and invested as other capital, it is a reinvestment by the stockholder.

Leach v. Arthur Savings Bank, 203 Iowa 1052.
Delano v. Butler, 118 U. S. 634.
Commercial National Bank v. Weinhard, 192 U. S. [illegible].

The charter privilege of immunity or limited immunity of stockholders from corporate debts may be withdrawn by the state under the reserved power because it is a privilege granted by the state. Not so as to liability to restore impaired capital. The state does not grant any privilege in this respect.

Garey v. St. Joe Mining Co., 32 Utah 497.
Anderson v. Commonwealth, 18 Grat. (59 Va.) 295.

The constitutional and statutory provisions of Iowa relative to reserve power over corporations are the following:

Section 12, Article 8, Constitution of Iowa:

"Subject to the provisions of this article, the General Assembly shall have power to amend or repeal all laws for the organization or creation of corporations, or

granting of special or exclusive privileges or immunities, by a vote of two-thirds of each branch of the General Assembly; and no exclusive privileges, except as in this article provided, shall ever be granted."

Section 8376, Code of Iowa, 1927, (Sec. 1619, Code of Iowa 1897):

"The articles of incorporation, by-laws, rules and regulations of corporations hereafter organized under the provisions of this title, or whose organization may be adopted or amended hereunder, shall at all times be subject to legislative control, and may be at any time altered, abridged or set aside by law, and every franchise obtained, used or enjoyed by such corporation may be regulated, withheld, or be subject to conditions imposed upon the enjoyment thereof, whenever the general assembly shall deem necessary for the public good."

The reserve power cannot be used to take the property of the corporation.

Superior Water, Light and Power Co. v. City of Superior, 263 U. S. 125.

Chicago, M. & St. P. R. Co. v. Wisconsin, 238 U. S. 491.

If the reserve power does not permit the taking of the property of the corporation itself, surely it does not permit the taking of the property of a stockholder. The statute attacked as unconstitutional reaches out and, as applied by the Iowa Court, forces a reinvestment in the corporate venture. It goes further and forces the stockholder to pay to the corporation money he never devoted or agreed to devote to the enterprise and compels such payment even after the stockholder has lost his relation as such to the corporation by the sale of his stock.

The reserve power laws came as a result of Justice Storey's suggestion in the *Dartmouth College* case. They are intended to prevent corporate rights and immunities granted

by the state from getting beyond the right of the state to control because of their contractual nature and the clause of the United States Constitution protecting contracts from impairment.

Reserve power laws are justifiable because they pertain to privileges and immunities granted. Certainly Section 10 of Article One, Constitution of the United States cannot be avoided in all cases of contract by a state law providing all contracts of every nature may be changed by law. Can the reserve power be carried further than to prevent privileges and immunities granted by the state from becoming absolute, or beyond reasonable control?

The majority opinion of the Iowa Supreme Court sustained Section 9248-a1, Code of Iowa 1927, as a change of remedy. The sovereign power of a state to alter remedies, or to provide a new and more effectual remedy for the enforcement of contracts so long as the obligation of the contract is not impaired, cannot be doubted. However, the statute challenged in this case creates a new liability and does impair the obligation of contract. The Iowa Supreme Court cites *Bernheimer v. Converse*, 206 U. S. 516 and *Henley v. Myers*, 215 U. S. 373. These cases sustained changes of remedy but did not increase the liability of the stockholder. No substantial right was affected by the remedy change in either of the last cited cases.

In explanation of *Bernheimer v. Converse*, Mr. Chief Justice Hughes said in *Selig v. Hamilton*, 234 U. S. 652, 660.

> "The constitutional validity of these provisions was sustained upon the ground that the statute is a reasonable regulation for enforcing the liability assumed by those who become stockholders in corporations organized under the laws of Minnesota."

Henley v. Myers, supra, merely sustained a procedural change. No additional liability or burden was cast upon the stockholder.

Waggoner v. Flack, 188 U. S. 595, simply provided a method of rescission by forfeiture where the obligation of contract had been breached. No new burden was placed upon one of the contracting parties. At the close of the opinion it is said:

> "The right to rescind the contract on the part of the state, upon failure of the purchaser to pay as he had agreed, resided in the state at common law, as the supreme court of Texas has held. *Tristoe v. Blum,* 92 Tex. 76, 84, 45 S. W. 998. The act of 1897 simply provided a particular means by which such right might be enforced."

In the case now before the court, a new and different liability is imposed upon the stockholder. A new burden is placed upon appellant. The contract is rendered less valuable. Before the enactment of the statute (Sec. 9248-a1, Code of 1927) a stockholder had a right to abandon the enterprise by letting his stock be sold. In *Turnpike Corp. v. Gould,* 6 Mass. 40, 44 it was said:

> "Persons not interested in having the Turnpike, either from their situation, or private property, may be requested to associate and become corporators. They may not be able to judge of the probable expenses or profits. But if they know that, if the assessments become grievous, they may abandon the enterprise by suffering their shares to be sold, they may on this principle join the association."

Again in *Machine Co. v. Hall,* 121 Mass. 272, 274, Chief Justice Gray said:

> "If it had been intended to impose any personal obligation to pay assessments, a distinct provision to that ef-

> fect would have been inserted, as it has been in the railroad acts * * * In view of the course of legislation and judicial decision in this commonwealth, the suggestion of Chief Justice Parsons (in *Turnpike Corp. v. Gould*, 6 Mass. 40) that any subscriber might as well rely upon the right to abandon the enterprise if the assessments should become burdensome has greatly increased in force, and the adoption of a different rule by this court now would work great injustice."

Section 9248-a1, Code of 1927 (41 G. A. Ch. 181) cannot be sustained as a change of remedy. One test as to whether a change of remedy is reasonable and does not impair the obligation of contract is whether the value of the contract has been lessened.

In *Bronson v. Kinzie*, 42 U. S. 1 How. 311, 315 this court said:

> "Whatever belongs merely to the remedy may be altered according to the will of the state, provided the alteration does not impair the obligation of the contract. But if that effect is produced, it is immaterial whether it is done by acting on the remedy, or directly on the contract itself. In either case, it is prohibited by the Constitution."

In *McCracken v. Hayward*, 2 How. 608, 611, 612, the court used the following language:

> "The obligation of a contract consists in its binding force on the party who makes it. This depends on the laws in existence when it is made. These are necessarily referred to in all contracts, and forming a part of them as the measure of the obligation to perform them by the one party and the right acquired by the other. There can be no other standard by which to ascertain the extent of either than that which the terms of the contract indicate, according to their settled legal meaning. When it becomes consummated, the law defines the duty and the right, compels one party to perform the thing contracted for, and gives the other a right to enforce the performance by the remedies then in force. If any sub-

sequent law affect to diminish the duty, or to impair the right, it necessarily bears on the obligation of the contract in favor of one party to the injury of the other; hence, any law which in its operation amounts to a denial or obstruction of the rights accruing by a contract, though professing to act only on the remedy, is directly obnoxious to the prohibition of the Constitution."

In *Siebert v. Lewis*, 122 U. S. 284, 294, it was said:

"It is well settled by the decisions of this court that the remedy subsisting in a state, when and where the contract is made and is to be performed, is a part of its obligation, and any subsequent law of the state which so affects that remedy as substantially to impair and lessen the value of the contract is forbidden by the Constitution and is therefore void. *Edwards v. Kearzy*, 96 U. S. 597, 607, 24 L. ed. 793, 798."

In *Planters Bank v. Sharp*, 6 How. 301, 327, this court said:

"One of the tests that a contract has been impaired is, that its value has by legislation been diminished."

In *Brine v. Hartford Fire Insurance Company*, 96 U. S. 627, 637, the circuit court of the United States decreed the immediate sale of mortgaged property in disregard of the law of a state in existence at the time the mortgage was made, to the effect that the morgagor should be allowed twelve months after the sale in which to redeem his property therefrom. The Supreme Court reversed the decision, and said:

"At all events, the decisions of this court are numerous that the laws which prescribe the mode of enforcing a contract, which are in existence when it is made, are so far a part of the contract that no change in these laws which seriously interfere with that enforcement are valid, because they impair its obligation within the meaning of the Constitution of the United States."

In the cases where remedy changes have been sustained, the substantial rights of the parties remained practically the same. We do not believe that the legislation challenged in this case can be sustained as a change of remedy. The majority opinion of the Iowa Supreme Court loses sight of the fact that the Constitution is for the protection of substantial and practical rights, and not to foster fanciful theories.

The right of the State to regulate the business of banking does not extend to taking the property of the stockholders. The police power is the power to regulate and not the power to unreasonably appropriate private property.

Under the police power the State cannot reach out and compel a stockholder in a savings bank to devote property to the enterprise. It may regulate the property invested but cannot compel citizens to devote more capital to the enterprise.

Yoncalla State Bank v. Gemmill, 134 Minn. 334, 159 N. W. 798.

Lake Shore & M. S. Ry. Co. v. Smith, 173 U. S. 684.

III.

SECTION 9248-a1, CODE OF IOWA, 1927 (41 G. A. CH. 181) AS APPLIED TO APPELLANT, TAKES THE PROPERTY OF APPELLANT WITHOUT DUE PROCESS OF LAW.

At the time appellant acquired his stock, he did not consent to or assume a liability such as that imposed by the challenged statute. By becoming a stockholder, appellant perhaps consented to a sale of his stock to satisfy an assessment. It cannot be said that he consented that his stock be sold and in addition he would make the stock worth its full value in the hands of the purchaser.

By the sale of the stock appellant's relationship to the corporation terminated. The corporation sold the stock for

One Dollar ($1.00) per share or a total of Twenty-six Dollars ($26.00). Why should it be deemed the duty of appellant to make this stock worth One Hundred Dollars ($100.00) per share in the hands of the person who purchased it for One Dollar ($1.00) per share? There is no reasonable ground for such a result. If appellant is compelled to pay Ninety-nine Dollars ($99.00) per share to the bank, such payment operates as a taking of the appellant's property and giving it to the new stockholder who has become the beneficial owner of all contributions to the capital stock of the bank.

Legislation that takes the property of one man and gives it to another violates the Fourteenth Amendment of the United States Constitution in that it takes property without due process of law.

Great Northern Ry. Co. v. Cahill, 253 U. S. 71.

In *Holden v. Hardy*, 169 U. S. 366, 390, it is said:

> "Recognizing the difficulty in defining with exactness the phrase, 'due process of law,' it is certain that these words imply a conformity with natural and inherent principles of justice, and forbid that one man's property or right to property, shall be taken for the benefit of another, or for the benefit of the State without just compensation."

When appellant became the owner of his stock, the only liability in respect to assessments to restore impaired capital was that his stock might be sold. Many years later a statute is enacted making him liable to a personal judgment for an additional sum of money, after his relationship to the corporation has been terminated. It is an arbitrary and unreasonable imposition in the form of a personal liability of a burden not assumed or consented to. The forced payment does not operate for the benefit of appellant. He no longer

owns the stock. It operates for the benefit of the corporation and the new stockholder.

No theory of police power can justify such a taking of property. The State itself could not so appropriate appellant's property without just compensation, without offending due process of law.

The reserve power of the state does not extend to taking property without due process of law.

Chicago, M. & St. P. R. Co. v. Wisconsin, 238 U. S. 491.

In *Lake Shore & M. S. Ry. Co. v. Smith*, 173 U. S. 684, 689 this court said:

> "The police power is a general term used to express the particular right of a government which is inherent in every sovereignty. As stated by Mr. Chief Justice Taney, in the course of his opinion in the License Cases, 5 How. 504, 583, in describing the powers of a state: 'They are nothing more or less than the powers of government inherent in every sovereignty to the extent of its dominions. And whether a state passes a quarantine law, or a law to punish offenses, or to establish courts of justice, or requiring certain instruments to be recorded, or to regulate commerce within its own limits, in every case it exercises the same power; that is to say, the power of sovereignty, the power to govern men and things within the limits of its dominion.'"
>
> "This power must, however, be exercised in subordination to the provisions of the federal constitution. If, in the assumed exercise of its police power, the legislature of a state directly and plainly violates a provision of the constitution of the United States, such legislation would be void."
>
> "The validity of this act is rested by the counsel for the defendant in error upon the proposition that the state legislature has the power of regulation over the corporations created by it, and, in cases of railroad corporations, the same power of regulation, and also full con-

trol over the subject of rates to be charged by them as carriers for the transportation of persons and property. Assuming that the state is not controlled by contract between itself and the railroad company, the question is, how far does the authority of the legislature extend in a case where it has the power of regulation, and also the right to amend, alter, or repeal the charter of a company, together with a general power to legislate upon the subject of rates and charges of all carriers? It has no right, even, under such circumstances, to take away or destroy the property or annul the contracts of a railroad company with third persons."

Greenwood v. Freight Co., 105 U. S. 13, 17.
Com. v. Essex Co., 13 Gray 239.
People v. O'Brien, 111 N. Y. 1, 52, 18 N. E. 692.
City of Detroit v. Detroit & H. P. R. Co., 43 Mich. 140, 5 N. W. 275.

"A railroad company, although a quasi public corporation, and although it operates a public highway (*Cherokee Nation v. Southern Kansas Ry. Co.*, 135 U. S. 641, 10 Sup. Ct. 965; *Lake Shore & M. S. Ry. v. Ohio*, 173 U. S. 285, 301, 19 Sup. Ct. 465), has, nevertheless, rights which the legislature cannot take away without a violation of the federal constitution, as stated in *Smyth v. Ames*, 169 U. S. 466, 544, 18 Sup. Ct. 418. A corporation is a person within the protection of the fourteenth amendment. *Railway Co. v. Beckwith*, 129 U. S. 26, 9 Sup. Ct. 207; *Smyth v. Ames*, 169 U. S. 466, 526, 18 Sup. Ct. 418. Although it is under government control, that control must be exercised with due regard to constitutional guaranties for the protection of its property."

The case just cited and quoted from clearly demonstrates the rule that the mere fact, if it be a fact, that the corporation is affected with a public interest does not deprive it of the constitutional guaranties. Its property cannot be taken without due process of law under guise of police power even though the power to alter or repeal the charter be reserved. *A fortiori*, the state cannot take the property of a mere stockholder in such a corporation.

Section 9248-a1 Code of Iowa 1927 is an arbitrary imposition of personal liability by legislative fiat. To enforce such liability is merely to take appellant's property from him. This can not be due process of law. Appellant was never given his day in court as to the creation of the liability, but simply because he was a stockholder in the bank the legislature of Iowa has arbitrarily and unreasonably imposed upon him this liability. The liability is imposed after the stockholder's relationship to the corporation has been terminated by the sale of his stock. The ultimate result is that appellant's property is taken from him and given to another person. The statute as applied by the Iowa Supreme Court offends fundamental principles of justice.

CONCLUSION.

Section 9248-a1, Code of Iowa, 1927 (41 G. A. Ch. 181) imposed a new liability and burden on appellant and impaired the obligation of contract. It also deprives appellant of his property without due process of law in violation of the Fourteenth Amendment to Constitution of the United States because it takes appellant's property and gives it to the bank or to the new stockholder.

Respectfully submitted,

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APPENDIX.

CHAPTER 29, ACTS OF THE TWENTY-FIFTH GENERAL ASSEMBLY OF IOWA.

Be it enacted by the General Assembly of the State of Iowa:

SECTION 1. That should the capital stock of any state or savings bank organized under the laws of this state be now, or hereafter become impaired by losses or otherwise, the board of directors of such state or savings bank may by consent of the Auditor of State, within thirty (30) days after passage of this act or after such impairment shall come to their knowledge, cause the deficiency to be made good by assessment upon the shareholders pro rata for the amount of stock held by them. Notice of such assessment to be given in writing signed by the president or vice-president and attested by the cashier or secretary of the association with the corporate seal thereof. The deposit of said notice in the postoffice directed to the shareholders at their last known address shall be sufficient for the purpose of this act.

SEC. 2. Should any of the shareholders in any state or savings bank organized under the laws of this state neglect or refuse to pay their pro rata of an assessment made under provisions of section 1 of this act within ninety days from the date of notice thereof, it shall be the duty of the board of directors to cause a sufficient amount of the capital stock held by such shareholder or shareholders to be sold at public auction (after thirty days' notice shall have been given by posting such notice of sale in the office of the bank and by publishing such notice in a newspaper of the city or town in which the bank is located, or in a newspaper published nearest thereto) to make good the deficiency, and the balance, if any, shall be returned to such delinquent shareholder or shareholders.

SEC. 3. Should the board of directors of any state or savings bank organized under the laws of this state, the capital of which now is, or hereafter may become impaired, neglect or refuse to proceed as provided in section 1 of this act, they shall by reason of such neglect or refusal, for a period of ten days after being requested in writing by the owner of two-thirds of the stock of such bank by and with the consent of the auditor of state, become individually liable for the amount of such deficiency and said liability may be enforced at law by any creditor of or stockholder in the association; or in case of its subsequent insolvency, by the receiver thereof.

SEC. 4. This act shall be in force and effect from and after its publication in the Iowa State Register and Des Moines Leader, newspapers published in the city of Des Moines, Iowa.

Approved April 24th, 1894.

I hereby certify that the foregoing act was published in the Iowa State Register May 5 and in the Des Moines Leader May 4, 1894.

W. M. McFARLAND, Secretary of State.

CODE OF IOWA, 1897.

SEC. 1878. Assessments. Should the capital stock of any state or savings bank become impaired by losses or otherwise, the auditor of the state may require an assessment upon the stockholders, and shall address an order to the several members of the board of directors of such bank, fixing the amount of assessment required, and the board of directors shall, within thirty days after the receipt of such order, cause such deficiency to be made good by a ratable assessment upon the stockholders for the amount of stock held by them, by giving such stockholders notice in writing,

signed by the president or vice-president, attested by the cashier or secretary of the bank, under its seal, if it have one, and deposited in the post-office, addressed to the last known residence of the stockholders, proof thereof to be made by the affidavit of the person so making the deposit, which notice shall state the entire sum to be raised, and the amount due from the addressed stockholder. (25 G. A., ch. 29, Sec. 1.)

SEC. 1879. How enforced. Should any stockholder neglect or refuse to pay his assessment within ninety days from the date of mailing notice thereof, the board of directors shall cause a sufficient amount of the capital stock held by such stockholder to be sold at public auction to make good the deficiency, after giving thirty days' notice thereof by posting the same in the bank, and publishing it in some newspaper of the county in which the bank is located, which notice shall recite the assessment made, the amount due thereunder from the stockholder, and the time and place of sale; proof of all which may be made in the manner provided in the preceding section. After such deficiency is made good, the balance of the proceeds of said sale, if any, shall be paid to the delinquent stockholder. (Same, Sec. 2.)

SEC. 1880. Directors liable. Should the board of directors of such bank having an impaired capital neglect or refuse to proceed as above provided for a period of thirty days after receipt of such order from the auditor of state, they shall become severally liable for any deficiency which liability may be enforced at law by any creditor of or stockholder in the bank, or receiver appointed to wind up its affairs. (Same, Sec. 3.)

CODE OF IOWA, 1924.

9246. Impairment of capital stock—assessments. Should the capital stock of any state or savings bank become im-

paired by losses or otherwise, the superintendent of banking may require an assessment upon the stockholders, and shall address an order to the several members of the board of directors of such bank, fixing the amount of assessment required. (C., '97, Sec. 1878.)

9247. Compliance with order. The board of directors shall, within thirty days after the receipt of such order, cause such deficiency to be made good by a ratable assessment upon the stockholders for the amount of stock held by them, by giving such stockholders notice in writing, signed by the president or vice president, attested by the cashier or secretary of the bank, under its seal, if it have one, and deposited in the postoffice, addressed to the last known residence of the stockholders, proof thereof to be made by the affidavit of the person so making the deposit, which notice shall state the entire sum to be raised, and the amount due from the addressed stockholder. (C., '97, Sec. 1878.)

9248. Assessment enforced. Should any stockholder neglect or refuse to pay his assessment within ninety days from the date of mailing notice thereof, the board of directors shall cause a sufficient amount of the capital stock held by such stockholder to be sold at public auction to make good the deficiency, after giving thirty days' notice thereof by posting the same in the bank, and publishing it in some newspaper of the county in which the bank is located, which notice shall recite the assessment made, the amount due thereunder from the stockholder, and the time and place of sale; proof of all which may be made in the manner provided in the preceding section. (C., '97, Sec. 1879.)

9249. Balance of proceeds. After such deficiency is made good, the balance of the proceeds of said sale, if any, shall be paid to the delinquent stockholder. (C., '97, Sec. 1879.)

9250. Liability of directors. Should the board of directors of such bank having an impaired capital neglect or re-

fuse to proceed as above provided for a period of thirty days after receipt of such order from the superintendent of banking, they shall become severally liable for any deficiency, which liability may be enforced at law by any creditor of or stockholder in the bank, or receiver appointed to wind up its affairs. (C., '97, Sec. 1880.)

CHAPTER 181, ACTS 41 G. A. OF IOWA.

Be it enacted by the General Assembly of the State of Iowa:

SECTION 1. Service of notice—personal liability. Section nine thousand two hundred forty-eight (9248) of the code, 1924, is hereby amended by striking out the word "thirty" in line eight (8) thereof and substituting therefor the word "ten"; also, by inserting after the word "thereof" in line eight (8) of said section the words "by personal service or".

Section nine thousand two hundred forty-eight (9248) is also amended by adding at the end of said section the following: "Should the proceeds of a sale hereunder of all of the stock of any stockholder be insufficient to satisfy his entire assessment liability he shall be personally liable for the deficiency, which may be collected by suit brought in the name of the bank against such stockholder."

SEC. 2. Publication clause. This act being deemed of immediate importance, shall be in full force and effect from and after its publication in the Des Moines Register, a newspaper published in the city of Des Moines, Iowa, and the Washington Evening Journal, a newspaper published at Washington, Iowa.

Approved March 10, A. D. 1925.

I hereby certify that the foregoing act was published in Plain Talk March 12, 1925, and the Washington Evening Journal March 13, 1925.

W. C. RAMSAY, Secretary of State.

CODE OF IOWA, 1927.

9246. Impairment of capital stock—assessments. Should the capital stock of any state or savings bank become impaired by losses or otherwise, the superintendent of banking may require an assessment upon the stockholders, and shall address an order to the several members of the board of directors of such bank, fixing the amount of assessment required. (C., '97, Sec. 1878; C., '24, Sec. 9246.)

9247. Compliance with order. The board of directors shall, within thirty days after the receipt of such order, cause such deficiency to be made good by a ratable assessment upon the stockholders for the amount of stock held by them, by giving such stockholders notice in writing, signed by the president or vice president, attested by the cashier or secretary of the bank, under its seal, if it have one, and deposited in the postoffice, addressed to the last known residence of the stockholders, proof thereof to be made by the affidavit of the person so making the deposit, which notice shall state the entire sum to be raised, and the amount due from the addressed stockholder. (C., '97, Sec. 1878; C., '24, Sec. 9247.)

9248. Assessment enforced. Should any stockholder neglect or refuse to pay his assessment within ninety days from the date of mailing notice thereof, the board of directors shall cause a sufficient amount of the capital stock held by such stockholder to be sold at public auction to make good the deficiency, after giving ten days' notice thereof by personal service or by posting the same in the bank, and publishing it in some newspaper of the county in which the

bank is located, which notice shall recite the assessment made, the amount due thereunder from the stockholder, and the time and place of sale; proof of all which may be made in the manner provided in the preceding section. (C., '97, Sec. 1879; C., '24, Sec. 9248; 41 G. A., ch. 181, Sec. 1.)

9248-a1. Liability for deficiency. Should the proceeds of a sale under the preceding section of all of the stock of any stockholder be insufficient to satisfy his entire assessment liability he shall be personally liable for the deficiency, which may be collected by suit brought in the name of the bank against such stockholder. (41 G. A., ch. 181, Sec. 1.)

9249. Balance of proceeds. After such deficiency is made good, the balance of the proceeds of said sale, if any, shall be paid to the delinquent stockholder. (C. '97, Sec. 1879; C., '24, Sec. 9249.)

9250. Liability of directors. Should the board of directors of such bank having an impaired capital neglect or refuse to proceed as above provided for a period of thirty days after receipt of such order from the superintendent of banking, they shall become severally liable for any deficiency, which liability may be enforced at law by any creditor of or stockholder in the bank, or receiver appointed to wind up its affairs. (C., '97, Sec. 1880; C., '24, Sec. 9250.)